



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

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Appeal of Southern California Edison  
Company (U-338 E) from Citation  
No. D.16-09-055 E.22-12-001 Issued by  
Safety and Enforcement Division

K.23-01-\_\_\_\_

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U-338 E)  
NOTICE OF APPEAL FROM CITATION D.16-09-055 E.22-12-001**

PATRICIA A. CIRUCCI  
CARLA M. BLANC

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-3715  
E-mail: Carla.Margolis.Blanc@sce.com

**Dated:** January 13, 2023

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On December 16, 2022, the Safety and Enforcement Division (“SED”) of the California Public Utilities Commission issued Citation D.16-09-055 E.22-12-001 (“Citation”) to Southern California Edison Company (“SCE”) arising out of a January 18, 2018, fatal injury to a journeyman lineman employed by SCE contractor, Herman Weissker, Inc. (“HWI”). Pursuant to Resolution ALJ-299, SCE hereby submits its notice of appeal of the Citation, the grounds for which are set forth below.<sup>1</sup>

**I. INTRODUCTION**

The Citation, issued pursuant to Decision 16-09-055, asserts three violations of the Commission’s General Order 95 (“GO 95”), Rule 31.1, alleging that SCE allowed its contractor, HWI, to proceed with work on a transmission project without meeting three requirements of SCE’s Contractor Safety Management Standard (“CSMS”), which SED contends constituted “accepted good practice” required by GO 95, Rule 31.1. SED alleges that had SCE complied with those three requirements, it would have discovered and rectified purported discrepancies between SCE’s grounding procedures and those of HWI, which may have prevented the incident.

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<sup>1</sup> Attached as Attachment A is SCE’s Notice of Appeal Form.

The Citation imposes a \$4.5 million penalty calculated by imposing a daily penalty of approximately \$25,860 for each alleged violation for 58 days.<sup>2</sup>

Safety is SCE's top priority and a core value, and SCE is working hard to improve the safety performance of its employees and its contractors. SCE did not complete the paperwork required by reviewing the documents that should have been provided by its contractor, and SCE takes responsibility for and regrets this lapse. However, the SED investigation report upon which the Citation is based contains some inaccurate key facts and findings, and the Citation is duplicative and excessive in relation to SCE's omission and should be adjusted more in line with the Commission's penalty factors and precedent.

SCE appeals the Citation on two grounds: (1) SED cannot meet its burden to show three separate violations of GO 95, Rule 31.1; and (2) the penalty imposed is excessive.

## **II. SED CANNOT MEET ITS BURDEN TO SHOW THREE SEPARATE VIOLATIONS OF GO 95, RULE 31.1**

General Order 95, Rule 31.1 requires electric utilities to design, construct, and maintain its facilities "to enable the furnishing of safe, proper, and adequate service" which "should be done in accordance with accepted good practice . . . ." SED has the burden of proof by a preponderance of the evidence for each of the three alleged violations.<sup>3</sup> SED cannot meet that burden on the first two alleged violations.

First Alleged Violation: SED alleges that SCE violated GO 95, Rule 31.1 because its CSMS required HWI to submit both The Hazard Assessment and The Project/Site-Specific EHS Plan ("EHS Plan") to SCE prior to the start of work, and SCE allowed work to proceed without receiving the EHS Plan from HWI.

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<sup>2</sup> Pursuant to California Public Utilities Code Section 2107, applicable at the time of this incident, the minimum daily penalty is \$500 and the maximum is \$50,000 per violation. SED calculated the alleged continuing violation as 58 days from the date SCE should have completed its review of the HWI documentation until the date of the incident.

<sup>3</sup> D.16-09-055 at 69-70.

SCE acknowledges that HWI did not submit the EHS Plan. However, there is no evidence that the failure of HWI to submit this document is what caused the work to be performed inconsistently with accepted good practices. As SED acknowledges, “[t]he CSMS does not require [the EHS Plan] to include detailed grounding plans.” The CSMS only requires SCE to address the hazards identified in the Hazard Assessment, such as the hazard of inadvertent energization. The facts show that “the hazard of inadvertent energization” was indeed addressed by the HWI crew. Both a journeyman lineman and two foremen on the HWI crew testified under oath in the underlying civil litigation that there were daily tailboard meetings, at which several hazards were discussed, including the specific hazard of induction. One HWI foreman, who helped set the grounds at the incident location testified that prior to the incident, the possible hazard of induction was discussed every time the crew was at the work location, including with the decedent. Moreover, HWI’s grounding manual and the SCE grounding manual—which an HWI foreman testified he printed and provided to the HWI foreman in charge of the decedent’s crew prior to the start of work—both addressed the hazard of induction. Contrary to the facts set out in the SED report, both grounding manuals were actually consistent in that each company required grounding on both sides of the worksite and thus, there was no actual discrepancy between SCE’s grounding procedures and HWI’s grounding procedures used on SCE projects.<sup>4</sup>

SCE appeals this alleged violation on the grounds that SED cannot establish a causal link between the failure to obtain the EHS Plan and HWI’s failure to ground in compliance with its own grounding manual. Moreover, the requirement to provide an EHS Plan was an HWI obligation under the CSMS, not an SCE obligation. SCE’s obligation was to review this and the

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<sup>4</sup> It appears that both sides of the worksite were grounded at some point during the project, which further belies the causal nexus between the lack of documentation and the incident: “HWI claimed in an October 12, 2020 letter that the lattice steel tower to the west of the worksite was indeed grounded with a grounding rod. SCE later stated in a December 16, 2021 letter that grounding bonds had been used to electrically connect the western end of the conductors to the lattice steel structure and the new steel pole, but that they were not in place at the time the incident occurred.” SED Investigation Report at 5.

other three documents in connection with its contractor orientation, which is the subject of the third alleged violation discussed below. This first alleged violation is therefore duplicative and subsumed in the third alleged violation.

Second Alleged Violation: SED alleges that SCE violated GO 95, Rule 31.1 because its CSMS also requires the contractor to complete and submit to SCE The Handbook for Contractors Checklist (“Checklist”). The Checklist is a list of the items covered by the handbook. The handbook states that the contractor must abide by SCE’s safety standards, and that the contractor’s procedures must not conflict with SCE’s. The Checklist must be signed and dated by both the contractor’s and SCE’s representatives. Again, the second alleged violation is inextricably tied to the incorrect assumption that there was a discrepancy between HWI’s grounding manual and SCE’s grounding manual and the assumption that this presumed discrepancy would have been discovered through a review of the Checklist.

SCE acknowledges that HWI did not provide the Checklist to SCE. However, the failure to obtain this document is not what caused the work to be performed inconsistently with accepted good practices. As correctly noted by SED, the EHS Handbook for Contractors states that the contractor must abide by SCE’s safety standards, and that the contractor’s procedures must not conflict with SCE’s. In concluding that HWI’s grounding practices “[did] not conform to the practices of SCE’s Overhead Grounding Manual,” SED relied only on HWI’s Accident Prevention Manual (“APM”), noting that HWI’s APM “makes no mention of induction and only prescribes a set of grounds on each side of a worksite when splicing a conductor together.”<sup>5</sup> While this is true as it relates to the APM, HWI had its own grounding manual that is separate and apart from its APM. Like SCE’s grounding manual, HWI’s grounding manual discusses the risk of induction, and requires that worked conductors be grounded on both sides of the workspace while working from an elevated work platform or if an induction hazard is present. SCE’s Overhead Grounding Manual dictates that the conductors must be grounded at a minimum

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<sup>5</sup> SED Investigation Report at 9.

of two places to ensure safety: one set of grounds shall be placed on either side of the worksite and an additional bond should connect the conductor to the elevated work platform while the work is being performed. Similarly, HWI's grounding manual provides for the installation of a "set of grounds on each side of the work location . . . ." And like SCE's grounding manual, HWI's manual identified the responsibility of the person in charge, the purpose for proper grounding, the need to protect from accidental energization, induction, difference of potential, overhead grounding requirements, approved grounding methods and typical situations, and bracket grounding requirements while working from an aerial device.

SCE appeals this alleged violation on the grounds that SED cannot establish a causal link between the failure to obtain the Checklist and HWI's failure to ground in compliance with its own grounding manual. Moreover, the Checklist was an HWI obligation pursuant to the CSMS, not an SCE obligation. SCE's obligation was to review this and the other three documents in connection with its contractor orientation, which is the subject of the third alleged violation. This second alleged violation is therefore duplicative and subsumed in the third alleged violation.

Third Alleged Violation: SED alleges that SCE violated GO 95, Rule 31.1 for failing to complete the Contractor Orientation Review after The Hazard Assessment, The Site-Specific EHS Plan, and The Handbook for Contractors Checklist have been received. The CSMS requires that SCE perform a contractor orientation by reviewing these three documents prepared by the contractor. Once the contractor has completed the documents and submitted them to SCE, SCE's obligation then arises in which it must review the documents and archive them along with the Contractor Orientation Review.

SCE admittedly did not complete the Contractor Orientation Review, pursuant to which it would have recognized HWI's failure to submit the EHS Plan and Checklist. If the failure to conduct the Contractor Orientation Review is indeed a violation,<sup>6</sup> it is a single violation under

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<sup>6</sup> Like the first two alleged violations, the third is inextricably tied to the assumption that there was a discrepancy between HWI's grounding manual and SCE's grounding manual and the assumption that this discrepancy would have been discovered during the orientation: "The completion and review of  
(Continued on next page)

these facts. The submittal of the EHS Plan and Checklist, which form the basis of the first and second alleged violations, were HWI's responsibility, not SCE's. And SCE's obligation was to review those documents as part of the orientation, which is the subject of the third alleged violation. The Citation acknowledges as much: "The purpose of the Contractor Orientation Review is to provide a checklist that binds the documents reviewed during the contractor orientation and to ensure mutual understanding between SCE and the Contractor regarding what is required to safely perform work for SCE."<sup>7</sup> The first and second alleged violations are subsumed in the failure to ensure those documents were received and reviewed as part of the orientation – the basis for the third alleged violation – and are therefore duplicative. Accordingly, the Citation's proposed duplicative imposition of three separate penalties for three alleged violations stemming from a single alleged omission is inappropriate and inconsistent with the Commission's long-standing precedent declining to impose multiple infractions arising from a single act.

### **III. THE PENALTY IS EXCESSIVE**

The fundamental premise upon which all three alleged violations are based is the alleged discrepancy between SCE's and HWI's grounding procedures. All three alleged violations rest on a hypothetical assumption that had SCE fully complied with its CSMS, SCE would have discovered those alleged discrepancies, and the accident would not have occurred.<sup>8</sup> But as discussed more fully above, there were no meaningful discrepancies between SCE's and HWI's grounding procedures, and SED has established no causal connection between the alleged failure

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those documents would have revealed that HWI's grounding procedure required modification to comply with SCE's grounding procedure." Citation at 4. SCE does not concede that SED can establish a violation for that reason; however, SCE does not challenge the Third Alleged Violation on appeal.

<sup>7</sup> Citation at 4.

<sup>8</sup> "Had SCE followed the requirements of the CSMS, it would have discovered the discrepancies between SCE's grounding procedures and HWI's, and work would have been delayed until those discrepancies had been rectified. This also could have better protected the SCE contractor from induced current and may have prevented the incident." Citation at 2.

to comply with the paperwork requirement of the CSMS and the unsafe condition present at the time of the accident nearly two months later.

The Citation imposes a \$4.5 million penalty, calculated by imposing a daily penalty of approximately \$25,860 for each of the three alleged violations for 58 days. The penalty is excessive because it imposes a \$4.5 million penalty for a single failure to ensure documentation on a project where no causal link has been established between that failure and the incident. And, the penalty was set in reliance on the incorrect assumption that the documentation failure would have or could have prevented the fatality, which as set forth in more detail above, is unsupported by the facts. It is, therefore, inconsistent with the Commission's Penalty Assessment Methodology because the subsequent fatality increased the severity or gravity of the offense and was considered an aggravating factor in the citation analysis. The penalty is also excessive because it is calculated on the basis of three alleged violations, where there was only one violation alleged arising from SCE's actions.

On the foregoing grounds, SCE submits its notice of appeal of the Citation.

Respectfully submitted,

PATRICIA A. CIRUCCI  
CARLA M. BLANC

/s/ Carla M. Blanc

By: Carla M. Blanc

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-3715  
E-mail: Carla.Margolis.Blanc@sce.com

January 13, 2023



**Attachment A**

**SCE's Notice of Appeal Form**



# Public Utilities Commission

## STATE OF CALIFORNIA

**Citation Date:** December 16, 2022  
**Citation #:** D.16-09-055 E.22-12-001  
**Utility/Operator ID#:** U338E

**Notice of Appeal Form**  
**Appeal from Citation issued by Safety and Enforcement Division**  
**(Pursuant to Decision 16-09-055)**

**Appellant:**

Carla Blanc

\_\_\_\_\_  
[Name]

Attorney at Law

\_\_\_\_\_  
[Title]

Southern California Edison Company

\_\_\_\_\_  
[Utility Name]

2244 Walnut Grove Avenue, 3rd Floor

\_\_\_\_\_  
[Mailing Address]

Rosemead, CA 91770

\_\_\_\_\_  
[City, CA Zip Code]

**Citation Date:** December 16, 2022

**Citation #:** D.16-09-055 E.22-12-001

**Utility/Operator ID#:** U-338 E

**Appeal Date:** January 13, 2023

“Appeal of Southern California Edison Company from D.16-09-055 E.22-12-001 issued by Safety  
[Utility/Operator Name] [Citation Number]  
and Enforcement Division”

Statements supporting Appellant’s Appeal of Citation (You may use additional pages if needed and/or attach copies of supporting materials along with this form).